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Security Council

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Letter dated 24 December 2002 from the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism addressed to the President of the Security Council

I write with reference to my letter of 12 September 2002 (S/2002/1009).

The Counter-Terrorism Committee has received the attached supplementary report from the Principality of Monaco, submitted pursuant to paragraph 6 of resolution 1373 (2001) (see annex).

I would be grateful if you could arrange for the present letter and its attachment to be circulated as a document of the Security Council.

(*Signed*) Jeremy **Greenstock**
Chairman
Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism

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Annex

Note verbale dated 23 December 2002 from the Permanent Mission of Monaco to the United Nations addressed to the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism

[Original: French]

The Permanent Mission of the Principality of Monaco to the United Nations presents its compliments to the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) of 28 September 2001 concerning counter-terrorism, and has the honour to transmit herewith the supplementary report of the Principality of Monaco submitted pursuant to paragraph 6 of the above-mentioned resolution (see enclosure*).

* The enclosures are on file with the Secretariat and are available for consultation.

Enclosure

Supplementary report submitted by the Principality of Monaco to the Counter-Terrorism Committee pursuant to paragraph 6 of Security Council resolution 1373 (2001) of 28 September 2001

[Original: French]

The Security Council,

...

Acting under Chapter VII of the Charter of the United Nations,

...

6. *Decides* to establish, in accordance with rule 28 of its provisional rules of procedure, a Committee of the Security Council, consisting of all the members of the Council, to monitor implementation of this resolution, with the assistance of appropriate expertise, and *calls upon* all States to report to the Committee, no later than 90 days from the date of adoption of this resolution and thereafter according to a timetable to be proposed by the Committee, on the steps they have taken to implement this resolution.

N.B.: This report has been prepared in accordance with the guidance for submission of reports contained in notes Nos. SCA/20/01(6) and S/AC.40/2002/MS/OC.147 of the Counter-Terrorism Committee.

I. Measures implemented pursuant to paragraph 1 of Security Council resolution 1373 (2001)

Subparagraph 1 (a)

The Security Council,

...

1. *Decides* that all States shall:

(a) *Prevent and suppress the financing of terrorist acts;*

1. ***Are natural or legal persons other than banks (e.g. attorneys, notaries) required to report to the public authorities suspicious transactions that might be linked to terrorist activities? If so, what penalties apply to persons who omit to report, either wilfully or by negligence?***

As stated in the initial report, a bill amending Act No. 1,162 of 7 July 1993 on the participation of financial institutions in combating money-laundering was brought before the National Council (Monegasque parliament) in order to establish an obligation to report suspicious transactions that might be linked to terrorism. Act No. 1,253 of 12 July 2002 duly amended the instrument, thereafter entitled "*Act No. 1,162 of 7 July 1993 on the participation of financial institutions in combating money-laundering and the financing of terrorism*" (see Annex 1).

The list of physical or legal persons governed by this Act includes:

Article 1

- Persons who customarily engage in banking transactions or who serve as intermediaries in banking transactions;
- The financial services of the Post Office;
- Insurance companies regulated by article 3 of Ordinance No. 4,178 of 12 December 1968 instituting State oversight of insurance and capitalization companies and regulating the insurance industry;
- Foreign exchange dealers;
- Companies conducting activities covered by article 1 of Act No. 1,194 of 9 July 1997 on portfolio management and related stock exchange activities;
- Persons appearing on the list covered by article 3 of Act No. 214 of 27 February 1936, as amended, and those engaging in oversight and management operations for foreign natural persons, all henceforth being bound by same obligations as bank institutions.

Article 2

- Lawyers, except those who have acquired information on movements of capital by reason of their role as defence counsel.

Article 2 and Sovereign Ordinance No. 14,466 of 22 April 2002:

- Auditors, accountancy experts, accountants and official receivers;
- Legal and financial advisers;
- Brokers and commodity traders;
- Estate agents;
- Money transmitters;
- Retailers and persons organizing the sale of precious stones, precious materials, antiques, works of art and other high-value items;

Article 19

- Notaries public;
- Representatives of the Law;

Article 25

- Casinos and gaming houses (now with enhanced obligations, including identification of all clients purchasing or exchanging chips or tokens worth 15,000 euros or more in the case of table games and €1,500 in the case of slot machines, and establishment of written house regulations to be communicated to the Financial Network Information Service (SICCFIN);

Pursuant to article 3 of Act No. 1,162, as amended, all above-mentioned professional entities are required to report:

> "*All accounting entries and any transactions involving sums that may originate from illicit drug-trafficking or organized criminal activities, as well as the facts on which they have based their report;*
>
> *All sums entered in their books and all transactions involving sums that may be linked to or are intended to finance terrorism, terrorist acts or terrorist organizations, and the facts on which they have based their report.*"

Failure to comply with Act No. 1,162, as amended, carries administrative and criminal penalties, including the failure to report suspicious transactions that might be linked to terrorism:

- **Administrative penalties**

In the event of failure to comply with obligations incumbent on the aforementioned persons arising therefrom, articles 18 and 21 of the above-mentioned Act provide for a caution, official warning, prohibition on engaging in certain transactions or revocation of authorization;

In addition, since any physical or legal person is required to obtain prior authorization in order to engage in an activity in the Principality of Monaco, that authorization may be withdrawn pursuant to Act No. 1,144 of 26 July 1991 concerning the exercise of certain economic and legal activities (art. 9(5)) or Act No. 767 of 8 July 1964 concerning the withdrawal of authorization to establish public companies and partnership limited by shares (art. 1(5)).

• **Criminal penalties**

Article 32 of Act No. 1,162, as amended, stipulates that breaches of the obligation to report shall be liable to the fine stipulated in article 26(3) of the Penal Code (from €9,000 to €1,800): "*Whosoever violates the provisions of articles 3, 5, 19 and 25 through evident neglect of the requirement of professional diligence provided for by this Act and by statutory instruments ...*".

Furthermore, article 29 stipulates: "*Whosoever prevents or attempts to prevent an investigation being carried out pursuant to article 26* [which establishes the inspection procedures to be conducted by SICCFIN agents] *shall be liable to imprisonment for from one to six months and to the fine envisaged in article 26 (2) of the Penal Code, or to one of those penalties only*".

Lastly, Sovereign Ordinance No. 15,320 of 8 April 2002 (see Annex 2) concerning the suppression of the financing of terrorism establishes criminal penalties for natural or legal persons who, by whatever means, whether directly or indirectly, have provided, collected or managed funds with the intention that they should be used, or in the knowledge that they are to be used, in order to carry out a terrorist act (see response under paragraph 1 (b)). Failure to make compulsory declarations voluntarily may constitute complicity in an act of financing of terrorism. In such case, complicit natural persons are liable to imprisonment for from 5 to 10 years (article 5). Legal persons also incur criminal liability; on account of persons acting on their behalf, under article 9, they may be liable to the fine envisaged in article 26 (4) of the Penal Code (from €18,000 to €90,000), which may be increased to the amount of the actual sum supplied or collected. Legal persons are also liable to have their authorization to operate withdrawn.

2. *Could you please inform the CTC about the outcome of the review conducted "to ensure that there is no obstacle to the exchange of information, in particular concerning the financing of terrorism". Does that review concern obstacles to the exchange of information among Monegasque authorities or with other States?*

The amendments introduced to Act No. 1,162 evidently facilitate the exchange of information, both within the Principality and with the authorities of foreign States:

- Firstly, the obligations imposed by Act No.1,162, as amended, have been extended to include more professionals (entities covered by arts. 1, 20 and 25). Furthermore, article 28 of Act No. 1,162, as amended, allows SICCFIN to receive all relevant information, not only from the Prosecutor-General, but also "*from inspecting authorities and State departments*". The persons listed in response to the previous question are obliged to report transactions involving sums that might have originated from drug-trafficking or organized criminal activities, as well as the facts on which they have based their report. They are also obliged to report sums that may be linked to or are intended to finance terrorism, terrorist acts or terrorist organizations, as well as the facts on which they have based their report.

  A committee for coordination between the various administrative departments responsible for oversight of financial activities has been

established pursuant to Sovereign Ordinance No. 15,530 of 27 September 2002 (see annex 5). The committee meets at least on a quarterly basis and is tasked with ensuring exchange of information between authorities responsible for oversight of investment banking and insurance activities, and management and administration for foreign legal persons, as well as raising other issues of common concern relating to the coordination of oversight of such activities.

This committee, chaired by the Government Adviser for Finances and the Economy may include in its membership a representative of an administrative department or any qualified person.

– Secondly, in addition to information on drug-trafficking and organized criminal activities, information is also exchanged with foreign authorities, pursuant to article 31, on "*transactions that appear to be linked to terrorism, terrorist acts or terrorist organizations, or to their financing*".

Similarly, pursuant to Sovereign Ordinance No. 11,246 of 12 April 1994, as amended, and on condition of reciprocity, SICCFIN may receive from a foreign supervisory authority — and transmit to it — any information received from financial institutions established in the Principality concerning domestic procedures for combating money-laundering, provided that the authority is bound by professional secrecy, with guarantees equivalent to those SICCFIN affords to financial institutions.

Article 17 of Act No. 1,162, as amended, has also been supplemented to allow documents regarding the identity of clients and transactions conducted to be transmitted to foreign counterpart authorities for their information, in circumstances envisaged in article 31.

3. *The Committee would welcome a progress report on the amendment of Act No. 1,162 of 7 July 1993 and Ordinance No. 11,246 of 12 April 1994 to which the report refers.*

As indicated in response to the first question, a bill amending Act No. 1,162 of 7 July 1993 was adopted by the National Council on 24 June 2002. The amending Act was published in the *Journal de Monaco* (Official Gazette) of 19 July 2002 as Act No. 1,253 of 12 July 2002 (see Annex I and Annex I bis containing Act No. 1,162, as amended by Act No. 1,253). In addition, Sovereign Ordinance No. 15,454 of 8 August 2002 amended Sovereign Ordinance No. 11,246 of 12 April 1994 concerning the establishment of a Financial Network Information Service (SICCFIN); the amendment was aimed primarily at giving the body the authority to carry out its new responsibilities under Act No. 1,162, as amended. (See the end of this response and Annex 4.)

Act No. 1,162 of 7 July 1993 on the participation of financial institutions in combating money-laundering stemmed from the ratification by Monaco of the United Nations Convention Against Illicit Traffic in Drugs and Psychotropic Substances, done at Vienna on 20 December 1988, demonstrating Monaco's wish to participate in the work of the Financial Action Task Force on Money Laundering (FATF); the Act was aimed, inter alia, at combating the laundering of proceeds from drug-trafficking and the activities of criminal organizations.

Following the events of 11 September 2001, this Act was amended to take account of recommendations and decisions of international authorities (including the Security Council and FATF) which urged States to adopt domestic legislative measures to combat terrorism and its financing.

Accordingly, counter-terrorism provisions have been incorporated into the text of Act No. 1,162. Financial institutions and persons governed by this Act are obliged to report sums and facts concerning transactions involving proceeds from drug-trafficking, the activities of criminal organizations or activities that may be linked to terrorism, terrorist acts or terrorist organizations, or that may be intended to finance terrorism (articles 3, 19 and 25).

A specific provision was introduced concerning the obligation to report suspicions in respect of "transactions registered or conducted in a State or territory whose legislation is known to be inadequate and whose practices are believed to hamper the anti-money-laundering efforts of competent international authorities responsible for consultation and coordination".

In that connection also, a directive of 11 April 2002 had already been transmitted to banks and financial institutions concerning the obligation to report suspicions in respect of financial transactions and persons associated with Nauru.

The new article 10 bis, to be applied in accordance with the eight recommendations of the FATF meeting of 31 October 2001, was designed to take account of modern means of transferring funds, such as electronic transfers, and to ensure that such transactions could be tracked.

In accordance with the recommendations of international bodies, the broadest possible assistance is envisaged for inquiries, investigations and proceedings. SICCFIN is currently expanding the number of agreements in place with foreign financial intelligence units (see details under para. 2 (f)).

Article 26 of Act No. 1,162, as amended, has been supplemented to give SICCFIN responsibility for oversight. It states that oversight procedures shall be governed by the above-mentioned Sovereign Ordinance No. 15,454 of 8 August 2002, which authorizes SICCFIN to monitor compliance with the provisions of the law and implementation measures for its enforcement, and to conduct on-site monitoring of individual transactions without being hampered by professional secrecy requirements.

Subparagraph 1 (b)

The Security Council,

...

1. *Decides* that all States shall:

...

(b) ***Criminalize the wilful provision or collection, by any means, directly or indirectly, of funds by their nationals or in their territories with the intention that the funds should be used, or in the knowledge that they are to be used, in order to carry out terrorist acts;***

Please provide the CTC with a progress report on the criminalization of the financing of terrorism in Monaco.

Following the entry into force of the International Convention for the Suppression of the Financing of Terrorism on 10 April 2002, the Monegasque authorities issued sovereign ordinances in the *Journal de Monaco* (Official Gazette) of 12 April 2002 allowing for domestic application of that international instrument, as well as for the implementation of the FATF special recommendations and relevant Security Council resolutions.

Sovereign Ordinance No. 15,320 of 8 April 2002 on the suppression of the financing of terrorism (see Annex 2), adopted in implementation of article 2 of the above-mentioned Convention, defines the offences and criminal penalties relating to acts of financing of terrorism. An act of financing of terrorism consists of providing, collecting or managing funds, by any means, directly or indirectly, with the intention that they should be used, or in the knowledge that they are to be used, in order to carry out one of the acts defined as a crime in any of the conventions relating to the suppression of terrorism that are annexed to the International Convention for the Suppression of the Financing of Terrorism (concerning international civil aviation and maritime navigation, nuclear material, terrorist bombings and the taking of hostages), or any other act intended to cause death or serious bodily injury to a civilian, or to any other person not taking an active part in the hostilities, in a situation of armed conflict, when the purpose of such act, by its nature or context, is to intimidate a population or to coerce a Government.

The instrument envisages penalties of 5 to 10 years' imprisonment for anyone found guilty of one or more acts of financing of terrorism. Complicity and attempted crime are punished with the same penalties. Monegasque legal persons (with the exception of the State, the Commune and public establishments) are criminally liable for acts of financing of terrorism. In the event that their criminal liability is established, they are liable to fines of from €18,000 to €90,000. In addition, their administrative authorization to operate in the Principality may be withdrawn by ministerial decree.

Subparagraph 1 (c)

The Security Council,

...

1. *Decides* that all States shall:

...

(c) *Freeze without delay funds and other financial assets or economic resources of persons who carry out, or attempt to carry out, terrorist acts or participate in or facilitate the commission of terrorist acts; of entities owned or controlled directly or indirectly by such persons; and of persons and entities acting on behalf of, or at the direction of such persons and entities, including funds derived or generated from*

N.B.: It is necessary to differentiate between the freezing of funds governed by Sovereign Ordinance No. 15,321 of 8 April 2002 concerning the procedures for the freezing of funds for the purposes of combating terrorism (see question 3) and the recourse available to SICCFIN to raise an objection under article 5 of Act No. 1,162, as amended (see question 1).

property owned or controlled directly or indirectly by such persons and associated persons and entities;

1. *Is the period of twelve hours sufficient in practice to allow a judicial order to be issued subsequent to a decision by the Financial Network Information Service (SICCFIN)?*

When considering a report of a suspicious transaction under Act No. 1,162 of 7 July 1993, as amended, SICCFIN may, pursuant to article 4 of that instrument, raise within 12 hours an objection concerning the funds in question, for the purpose of obtaining at the earliest opportunity a court order (civil sequestration) to supersede the provisional objection made by SICCFIN.

In view of the very close ties established with the financial institutions and the judicial authorities,[1] this period is sufficient in practice. Banks and financial institutions do in fact possess their own SICCFIN focal points; the latter are thus easily approachable for consultation at short notice. The same is true of the judicial authorities which allows for compliance with the period stipulated by law.

2. *Under which conditions can a judicial sequestration order be issued? Are there means of appeal against such a decision and what are the legal consequences of an appeal on a sequestration order?*

According to the procedure detailed in response to question 1 above, once an administrative sequestration order has been issued by SICCFIN it must, within 12 hours, refer the request for judicial sequestration to the judicial authorities. In practice, SICCFIN refers the matter to the Prosecutor General, who requests a sequestration order from the President of the Court of First Instance; once issued, this order is immediately relayed to the banking institution, which is required to comply.

A court sequestration order usually coincides with the opening of a judicial investigation by the office of the Prosecutor General. Thereafter, the examining magistrate may order the freezing of the suspicious funds (arts. 87 and 100 to 106 of the Code of Criminal Procedure). He may also "*confiscate or have confiscated any items helpful in ascertaining the truth, which are to be placed under lock and key following itemization*" (article 100 of the Code of Criminal Procedure); "*If the items confiscated include any cash, ingots, assets or securities whose preservation in that form is not deemed necessary in order to ascertain the truth or to safeguarding the rights of the persons concerned, or of third parties, the examining magistrate may instruct the clerk of the court to deposit them in the* Caisse des dépôts et consignations" [French public and investment organization] (article 104 of the Code of Criminal Procedure).

In the context of a hearing, it is possible to appeal against the judge's decision in this respect. Until the closure of the investigation the accused, or any person claiming a right to the confiscated funds, may apply to the examining judge for restitution (article 105 of the Code). If the judge refuses, an appeal can be made to the Judge's Chambers of the Court of Appeal in the form of an ordinary petition, within ten days after notice has been served to the parties concerned.

[1] It should be recalled that the Principality of Monaco is a small State whose administrative and judicial apparatus is "human" in dimension, allowing for swift and effective communication of files between the various authorities concerned.

In the context of a trial, the provisions of the Penal Code allow the judge to confiscate funds used or intended to be used to commit an offence linked to terrorism, or representing the proceeds of a crime (arts. 12 and 32). The Penal Code also provides for the confiscation of property and capital of illicit origin, including that derived from an offence of financing of terrorism, a terrorist act, or a terrorist organization. Sovereign Ordinance No. 15,320 concerning the suppression of the financing of terrorism also requires the confiscation of funds used to finance terrorism, a terrorist act or a terrorist organization, or the proceeds thereof (art. 10).

3. *Please provide the CTC with a progress report on the draft Sovereign Ordinance designed to implement subparagraphs 1 (c) and (d) of the resolution.*

Sovereign Ordinance No. 15,321 of 8 April 2002 concerning the procedures for the freezing of funds for the purposes of combating terrorism (see Annex 3), adopted in implementation of article 8 of the International Convention for the Suppression of the Financing of Terrorism and Security Council resolution 1373 (2001), establishes asset-freezing procedures. This instrument provides inter alia for:

- A definition of the concept of freezing, which consists of preventing any movement, modification, use or manipulation of such funds (art. 2);
- The obligation for credit bodies, financial institutions, insurance companies and any body, entity or person to freeze funds belonging to or held by natural or legal persons or entities, or by bodies listed by ministerial decree (art. 1);
- Additional prohibitions, such as on making frozen funds available to persons listed by ministerial decree, on providing services to such persons, and on carrying out or participating in operations to bypass freezing procedures (art. 3);
- Criminal penalties (from €18,000 to €90,000) applicable in the event of failure to comply with the above-mentioned obligations (art. 7).

Following the publication of Sovereign Ordinance No. 15,321, three ministerial decrees (No. 2002-222 of 9 April 2002, No. 2002-434 of 16 July 2002, No. 2002-581 of 11 October 2002) were issued for purposes of its implementation. These decrees identify the physical or legal persons and entities or bodies whose funds must be frozen. The lists include the persons and entities appearing on the regularly updated lists drawn up and communicated by the Security Council Committee established pursuant to Security Council resolution 1267 (1999) in implementation of that resolution and resolutions 1333 (2000) and 1390 (2002), as well as the lists produced under the regulations of the European Commission and the Council of the European Union. Any future lists established by ministerial decree will be amended or supplemented on the basis of decisions adopted by these international bodies.

4. *What kind of information will banks and other financial institutions be required to provide to the Monegasque authorities? What are the penalties provided by law and what sentences, if any, have been handed down for failure to report such information?*

SICCFIN is responsible for collecting, processing and relaying information on money-laundering networks as defined by the Egmont Group, of which it has been a

member since 1995; pursuant to article 17, it may also keep foreign counterpart authorities informed, in accordance with the conditions envisaged in article 31.

Banks or financial institutions reporting a suspicion to SICCFIN are required to: indicate the grounds for the suspicion; specify the amount and nature of the funds; describe the transactions in question (with supporting documents), as well as the financial background to the transaction; and supply data on their client or clients (client profile information), as well as bank statements (arts. 3, 5 and 17 of Act 1,162, as amended; see reply under para. 1 (a), question 2).

Failure to report a suspicion as defined in article 32 of Act No. 1,162, as amended, is penalized by a penalty stipulated in article 26 (3) of the Penal Code (from €9,000 to €18,000). The failure to exercise due vigilance is liable, like the failure to report a suspicion, both to administrative penalties (three cautions) and to criminal penalties that have already been handed down.

SICCFIN has officially instructed banks and financial institutions to maintain heightened vigilance in implementing the panoply of recently strengthened legislative provisions and regulations for combating money-laundering and the financing of terrorism, particularly when tracing and identifying persons on the lists relating to terrorism and reporting to SICCFIN as requested.

Furthermore, as mentioned under question 3 above, Sovereign Ordinance No. 15,321 requires lending bodies, financial institutions, insurance companies and all bodies, entities and persons to provide all necessary information to the Director of the Budget and Treasury in order to ensure compliance with that Ordinance's provisions (article 4). Pursuant to article 7, any failure to comply with that requirement may be prosecuted and incur the penalties stipulated in article 26 (4) of the Penal Code (from €18,000 to €90,000).

5. *Will Monaco be able to freeze funds of both resident and non-resident persons under the draft Sovereign Ordinance designed to implement subparagraph 1 (c)?*

Yes. Article 1 of Sovereign Ordinance No. 15,321 does not impose any residency requirements. It suffices that the funds (according to the definition in the International Convention for the Suppression of the Financing of Terrorism) are held or deposited, or are the subject of a transaction, in the Principality of Monaco, irrespective of the holders' place of residence.

6. *In addition to the penalties envisaged in article 26 (4) of the Penal Code, does Monaco intend to impose obligations or penalties directly on natural persons who fail to comply with an asset-freezing procedure?*

Failure to comply with asset-freezing procedures may constitute an offence of financing of terrorism within the meaning of article 2 (1) of Sovereign Ordinance No. 15,320 on the suppression of the financing of terrorism, which penalizes the collecting or management of funds by whatever means, whether directly or indirectly, with the intention that they should be used, or in the knowledge that they are to be used, in order to carry out a terrorist act.

In such case, the Ordinance provides for sentences of 5 to 10 years for physical persons for financing, attempting to finance, or participating in the commission of an act of financing of terrorism (arts. 4, 5, 6, 7 — see reply under paragraph 1 (b)).

7. *What is the basis on which names are included in, or deleted from, the list of persons or entities suspected of terrorism issued by ministerial decree?*

As explained at the end of the response to question 3 above, the lists of physical and legal persons drawn up under Ministerial Decree pursuant to article 1 of Sovereign Ordinance No. 15,321 that have been issued to date contain the persons and entities appearing on the lists drawn up by the Security Council Committee established pursuant to resolution 1267 (1999) in implementation of that resolution and resolutions 1333 (2000) and 1390 (2002), and incorporated in the regulations of the European Commission. Any new list issued by a Security Council Committee calling for the freezing of terrorist funds or funds linked to terrorism, or by a regulation or decision of the European Union, would occasion a new Ministerial Decree issued by the Minister of State. It is thus that the persons and entities contained in the list enumerated in the decision of the Council of the European Union of 17 June 2002 (2002/460/CE) and, subsequently, in its decision of 28 October 2002 (2002/848/CE) implementing article 2 of regulation (CE) No. 2580/2001 of the Council of the European Union of 27 December 2001, were also included in the lists drawn up by ministerial decree in Monaco.

Subparagraph 1 (d)

The Security Council,

...

1. *Decides* that all States shall:

...

(d) *Prohibit their nationals or any persons and entities within their territories from making any funds, financial assets or economic resources or financial or other related services available, directly or indirectly, for the benefit of persons who commit or attempt to commit or facilitate or participate in the commission of terrorist acts, of entities owned or controlled, directly or indirectly, by such persons and of persons and entities acting on behalf of or at the direction of such persons;*

How does the financial tracking system ensure that funds received by associations are not diverted from their stated purposes to terrorist activities?

Act No. 885 of 29 May 1970 concerning financial oversight of private-law bodies receiving State subsidies provides for oversight by the Monegasque authorities of associations, foundations and other private-law bodies in receipt of State subsidies. Such far-reaching financial oversight is conducted by State agents of the Department of Financial Oversight, General Expenditure Control (Service de vérification des finances, Contrôle Général des Dépenses). This department possesses the necessary investigatory authority to carry out itemized, on-site inspections of books, balance sheets and annual accounts. It may request the body in question to provide any clarification or documentary evidence it deems necessary.

A bill on associations and federations that is currently under consideration would require groups certified by the Monegasque authorities to submit a full annual report on their activities and accounts to the Minister of State.

II. Measures implemented pursuant to paragraph 2 of Security Council resolution 1373 (2001)

Subparagraph 2 (a)

The Security Council,

...

2. *Decides also* that all States shall:

(a) *Refrain from providing any form of support, active or passive, to entities or persons involved in terrorist acts, including by suppressing recruitment of members of terrorist groups and eliminating the supply of weapons to terrorists;*

1. *Could Monaco please explain how it criminalizes the recruitment of members of terrorist groups both inside and outside Monaco, as distinct from the criminalization of the association to such a group.*

The recruitment by a person of members of an "association of wrongdoers", such as a terrorist group, is considered involvement in the crime and is punished as such, pursuant to articles 209 to 211 of the Penal Code (10 to 20 years' imprisonment).

Such activities committed outside the Principality may be viewed as complicity in membership of a terrorist group, the applicable penalties being the same as those envisaged for the main offence (arts. 41 and 42 of the Penal Code).

2. *What are the penalties provided for the acquisition of firearms without a licence?*

Pursuant to article 20 of Act No. 913 of 18 June 1971 on arms and ammunition, the acquisition of firearms without a licence is punishable by imprisonment for from six months to three years and a fine of from €9,000 to €18,000.

In addition, an offender who has previously been sentenced to imprisonment or to a more serious penalty for a crime or offence is liable to one to five years' imprisonment.

The court systematically orders the confiscation of any arms and ammunition that have been acquired without a licence.

3. *Please outline the measures, both legislative and practical, preventing entities and individuals from recruiting, collecting of funds or soliciting other forms of support for terrorist activities to be carried out inside or outside Monaco, including, in particular:*

- *The carrying out, within or from inside Monaco, of recruiting, collecting of funds and soliciting of other forms of support from other countries; and*
- *Deceptive activities such as recruitment based on a representation to the recruit that the purpose of the recruitment is one (e.g. "teaching") different from the true purpose and collection of funds through front organizations.*

Articles 209 to 211 of the Monegasque Penal Code concern legislative measures in force in Monaco aimed at suppressing recruitment for the purposes of involving persons in terrorist activities, as stated in response to question 1 above.

Similarly, Sovereign Ordinance No. 15,320 concerning the suppression of the financing of terrorism concerns measures aimed at suppressing the collecting of funds for terrorist activities. (See reply under para. 1 (b)).

Other provisions of the Penal Code enable the judicial authorities to prosecute and impose prison sentences on persons fraudulently collecting funds for the purpose of perpetrating acts of terrorism:

- Article 323 prohibits, inter alia, the extortion of funds:

  "Whosoever, by means of force, violence or coercion, extorts the remittance of funds or assets, or the signature or remittance of a document, deed, title or paper of any kind that comprises or creates an obligation, requirement or release shall be liable to 10 to 20 years' imprisonment.

  "Whosoever, by means of a written or verbal threat, defamatory allegations or accusations extorts, or attempts to extort, either the remittance of funds or assets, or the signature or remittance of one of the above-mentioned documents, shall be liable to one to five years' imprisonment and shall be fined pursuant to article 26 (4) (from €18,000 to €90,000)."

- Article 330, for its part, prohibits fraud, which in a way corresponds to "deceptive activities such as recruitment based on a representation to the recruit that the purpose of the recruitment is one (e.g. teaching) different from the true purpose and collection of funds through front organizations".

  This article stipulates, inter alia: "*Whosoever, by adopting a false name or capacity or employing fraudulent tactics to create belief in the existence of a fictional company, authority or credit rating, or to raise hopes or fears of a success, accident or any other unreal event, requests or delivers funds, furniture, securities, money, goods, tickets, promissory notes, receipts or any other documents containing or creating an obligation or exemption and who has by one of these means defrauded or attempted to defraud another person of all or part of his fortune* ***shall be liable to one to five years' imprisonment and a fine stipulated in article 26 (4)*** *" (from €18,000 to €90,000).*

Furthermore, in accordance with Act No. 590 of 21 June 1954 regulating public donations, any appeal to public charity for the purpose of raising funds for a specific project necessitates the prior authorization of the Monegasque authorities. The Act requires the entity that has obtained approval to this effect to provide the authorities with information on the amount of funds collected and on their intended purpose and destination.

It should be noted that in practice, the police and judiciary are responsible for ensuring compliance with legal provisions relating to recruitment, collection of funds and any other assistance for terrorist activities. These are general rules applicable to all offences, not only those linked to terrorism.

Subparagraph 2 (b)

The Security Council,

...

2. *Decides also* that all States shall:

...

(b) *Take the necessary steps to prevent the commission of terrorist acts, including by provision of early warning to other States by exchange of information;*

Please provide the CTC with information on the mechanism for inter-agency cooperation among the authorities responsible for narcotics control, financial tracking and security, with particular regard to the border controls designed to prevent the movement of terrorists.

Before responding in detail to the question, we wish to recall that the Principality of Monaco is a small, entirely urbanized State with an area of 2 km^2 and a population of 32,000. Hence, there is only one police service — the Public Security Department of Monaco — which is responsible for narcotics control, financial tracking and security. Unlike certain larger countries, Monaco has no specialized police divisions and thus no attendant cooperation problems.

In the initial report (under para. 2 (g)) on the subject of border controls, it was stated, inter alia, that air and maritime border controls were exercised jointly by the Monegasque Public Security Department and French Customs pursuant to the (European) Schengen Agreements and treaties between France and Monaco. By way of supplementary information, it should be noted that the Principality of Monaco possesses specific measures to prevent the arrival and settlement in its territory of personae non gratae; in implementing border controls in practice, it enforces provisions regulating entry into the Schengen area. A person whose name appears on the Schengen computerized non-entry file may accordingly not enter Monegasque territory.

Furthermore, residence of foreign nationals in Monaco requires the prior approval of the French authorities; pursuant to the Convention on good-neighbourliness between France and Monaco of 18 May 1963, as amended, for a residence permit to be granted to an alien, prior consultation with the French authorities is required. Any objection by the French authorities to the settlement of an alien in Monaco results in the non-issuance of a residence permit to the person concerned.

Further, following the attacks of 11 September 2001, the Monegasque Public Security Department was instructed to strengthen border controls under the Vigirenfort plan. This mechanism also provides for regular meetings to exchange information in the area of prevention and counter-terrorism; chaired by the Government Advisor for Home Affairs, such meetings are attended by the heads of various State departments (judicial authorities, Public Security Department, SICCFIN, Department of Civil Engineering). Through the Interpol network, the Public Security Department communicates information collected in the Principality of Monaco to foreign police authorities whom it might concern.

Subparagraphs 2 (c) and (d)

The Security Council,

...

2. *Decides also* that all States shall:

...

(c) *Deny safe haven to those who finance, plan, support or carry out terrorist acts, or provide safe havens;*

(d) *Prevent those who finance, plan, facilitate or carry out terrorist acts from using their respective territories for those purposes against other States or their citizens;*

Please elaborate on the circumstances in which the Monegasque authorities are under a legal obligation to refuse an alleged terrorist permission to enter or settle in the territory of Monaco. Please supply examples of relevant action taken, if any.

The Monegasque authorities may at their discretion and in all circumstances refuse an alien deemed persona non grata entry into or residence in the territory of the Principality. Any person suspected of terrorism is thus systematically returned (refoulé) from the national territory (art. 22 of Ordinance No. 3,153 concerning conditions governing the entry and residence of aliens in the Principality).

Subparagraph 2 (e)

The Security Council,

...

2. *Decides also* that all States shall:

...

(e) *Ensure that any person who participates in the financing, planning, preparation or perpetration of terrorist acts or in supporting terrorist acts is brought to justice and ensure that, in addition to any other measures against them, such terrorist acts are established as serious criminal offences in domestic laws and regulations and that the punishment duly reflects the seriousness of such terrorist acts;*

1. *What measures are in place to prevent or punish acts committed by terrorist organizations operating from Monaco, by fund-raising for example, but for a cause not likely to affect Monegasque interests?*

Acts of financing of terrorism committed in Monaco are punished even if they do not affect Monegasque interests (arts. 4 and 5 of Sovereign Ordinance No. 15,320 of 8 April 2002).

2. *Several international conventions relating to the prevention and suppression of terrorism provide for optional jurisdiction over the offences set forth therein when committed under certain circumstances (art. 8 (4) of the Convention on the Physical Protection of Nuclear Material; art. 6 (2) of the Convention on the Suppression of Unlawful Acts Against the Safety of Maritime Navigation; art. 3 (2) of the Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf; art. 6 (2) of the International Convention for the Suppression of Terrorist Bombings). Has Monaco chosen to establish its jurisdiction over those offences under those provisions?*

The above-mentioned provisions request each State party to the Conventions to establish their jurisdiction over the offences defined therein, including if:

– **The offence is committed against one of its nationals (or if a national of that State is held, threatened, injured or killed during its perpetration):**

according to the basic principle established by article 9 (1) of the Code of Criminal Procedure, an alien accused of a crime outside the territory of the Principality or of an offence committed against a Monegasque national may be prosecuted and sentenced in Monaco. If the crime against a Monegasque national is committed in national territory, there is all the more reason for him to be prosecuted and sentenced in Monaco in accordance with the basic principle of territoriality of law.

- **The offence is committed against a State facility situated outside its territory, including an embassy and diplomatic or consular premises**: if the attack is aimed at causing devastation, death or destruction in Monegasque territory, the offence is punishable under article 65 of the Penal Code; in addition, article 7 of the Code of Criminal Procedure allows for the prosecution and sentencing in Monaco of an alien who is accused outside the territory of the Principality of a crime against State security, or of a crime or offence against Monegasque diplomatic or consular premises or agents.

- **The offence is committed by an expatriate customarily residing in the State's territory**: application of the basic principle of territoriality of criminal law allowing for the prosecution of expatriates habitually resident in Monaco.

- **The offence is committed with the aim of coercing a State to take or to refrain from taking a particular action**: the criminal acts in question normally correspond to one of the above-mentioned offences, whether committed directly or as an act of complicity.

- **The offence is committed on board an aircraft used by the Government of the State party**: Were the Monegasque Government to engage in direct operation of an aircraft or airline, the aircraft would have to be registered in Monaco, thus rendering applicable the Tokyo Convention of 14 September 1963. The Convention was made binding in Monaco by Sovereign Ordinance No. 7,963 of 24 April 1984, which provides that the courts and tribunals of the State of registration of the aircraft have jurisdiction over any offences committed on board.

- **With regard to the Convention on the Physical Protection of Nuclear Material**, the State party may establish its jurisdiction over offences covered therein if it is involved in the international transportation of nuclear material as an exporting or importing State. Since the Monegasque State possesses no capabilities for converting, storing or reprocessing nuclear material within the meaning of the Convention, it has never imported and does not intend in the future to import, still less to export, such material.

Subparagraph 2 (f)

The Security Council,

...

2. *Decides also* that all States shall:

...

(f) *Afford one another the greatest measure of assistance in connection with criminal investigations or criminal proceedings relating to the financing or support*

of terrorist acts, including assistance in obtaining evidence in their possession necessary for the proceedings;

Is the existence of a bilateral agreement or arrangement a prerequisite for the offering by Monaco of legal assistance to other countries as required by this subparagraph?

The existence of a bilateral or multilateral agreement is not a prerequisite for the provision of legal assistance in criminal matters (see arts. 203 to 206 of the Code of Criminal Procedure).

Concerning financial information, SICCFIN, pursuant to article 29 of Act No. 1,162, as amended, exchanges information on a reciprocal basis with its counterparts. Permanent bilateral agreements have also been signed with several other countries (France, Belgium, Spain, Portugal, Luxembourg, the United Kingdom, Switzerland and Panama) concerning the exchange of information relating to combating money-laundering and the financing of terrorism.

III. Measures implemented pursuant to paragraph 3 of Security Council resolution 1373 (2001)

Subparagraphs 3 (a) and (b)

The Security Council,

...

3. *Calls upon* all States to:

(a) *Find ways of intensifying and accelerating the exchange of operational information, especially regarding actions or movements of terrorist persons or networks; forged or falsified travel documents; traffic in arms, explosives or sensitive materials; use of communications technologies by terrorist groups; and the threat posed by the possession of weapons of mass destruction by terrorist groups;*

(b) *Exchange information in accordance with international and domestic law and cooperate on administrative and judicial matters to prevent the commission of terrorist acts;*

Please elaborate on the "legal and bureaucratic obstacles" which Monaco intends to remove in order to comply with these subparagraphs.

There are no specific legal or bureaucratic obstacles in this domain (see reply under para. 2 (b)). The reference to the removal and simplification of obstacles in Monaco's initial report concerned the benefit Monaco might derive from the support provided by Europol to various national departments through rapid communication of relevant information. The following details were provided concerning the type of communication and services, namely: "*simplified and protected data transmission, including personal data, **removal of legal or bureaucratic obstacles**, simplification of investigation procedures).*

Subparagraph 3 (c)

The Security Council,

...

3. *Calls upon* all States to:

...

(c) *Cooperate, particularly through bilateral and multilateral arrangements and agreements, to prevent and suppress terrorist attacks and take action against perpetrators of such acts;*

With which countries has Monaco entered into bilateral treaties on extradition and mutual legal assistance in addition to those mentioned in subparagraph 2 (b) of the report (France, Italy, Germany, Belgium and Australia)?

The Principality of Monaco has officially concluded conventions with 15 States (France, Italy, Germany, Australia, Austria, Belgium, the Czech Republic, the Slovak Republic, Spain, the United States of America, Liberia, the United Kingdom, the Netherlands, the Russian Federation, Switzerland) in the areas of mutual assistance in legal matters and extradition (conventions on extradition incorporating provisions for mutual legal assistance in criminal matters).

It is worth recalling that under Monegasque law, extradition and the provision of mutual legal assistance are not dependent on the existence of a bilateral or multilateral agreement. In practice, Monaco sets no limits on its cooperation with any State requesting legal assistance, including in executing international commissions rogatory. Accordingly, any request in that regard may be responded to immediately and in full, whether or not a bilateral convention has been concluded with the requesting country.

Subparagraph 3 (d)

The Security Council,

...

3. *Calls upon* all States to:

...

(d) *Become parties as soon as possible to the relevant international conventions and protocols relating to terrorism, including the International Convention for the Suppression of the Financing of Terrorism of 9 December 1999;*

The CTC would welcome a progress report, in relation to the twelve relevant international conventions and protocols relating to terrorism, on:

- The steps taken in order to become a party to the instruments to which Monaco is not yet a party; and
- Progress made in enacting legislation and making other necessary arrangements to implement the instruments to which it has become a party.

Since the submission of Monaco's initial report, three international instruments on the suppression of terrorism have entered into force in Monaco, namely:

- The *International Convention for the Suppression of the Financing of Terrorism* signed and ratified on 10 November 2001. This Convention was made binding in the Principality by Sovereign Ordinance No. 15,319 of 8 April 2002, which established 10 April 2002 as its date of entry into force;

– The *Convention on the Suppression of Unlawful Acts Against the Safety of Maritime Navigation* and the *Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf*, Monaco's instruments of accession having been deposited on 25 January 2002. These instruments were made binding in the Principality by Sovereign Ordinances Nos. 15,322 and 15,323 of 8 April 2002, which established 25 April 2002 as their date of entry into force.

On 27 November 2002, the Principality deposited its instrument of accession to the *Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents*, done at New York on 14 December 1973. This international instrument enters into force in Monaco on 27 December 2002. On that date, the Principality will thus be a party to all the international instruments relating to terrorism.

• The Government of the Principality has also taken steps to enact specific laws to criminalize terrorism and its financing. It has, inter alia, adopted Sovereign Ordinances No. 15,320 on the suppression of the financing of terrorism (see reply under para. 1 (b) and No. 15,321 concerning the procedures for the freezing of funds for the purposes of combating terrorism (see reply to question 3 under para. 1(c)). Lastly, Act No. 1,253 of 12 July 2002 was enacted amending Act No. 1,162 of 7 July 1993 and extending its field of application to include efforts to combat the financing of terrorism (see response to question 1 under para. 1 (a)).

Internal procedures under way

In addition to the instruments already in force relating more specifically to the **financing** of terrorism, the Government of the Principality is currently finalizing a draft Sovereign Ordinance concerning crimes linked to specific terrorist acts, which defines penalties providing for more severe punishment of such crimes. The penalties that perpetrators of the various crimes contained in certain conventions to suppress international terrorism may incur are imprisonment from 10 to 20 years (unless other penal provisions provide for more serious punishment) and a fine of from €18,000 to €450,000.

Subparagraph 3 (e)

The Security Council,

...

3. *Calls upon* all States to:

...

(e) *Increase cooperation and fully implement the relevant international conventions and protocols relating to terrorism and Security Council resolutions 1269 (1999) and 1368 (2001);*

Have the offences set forth in the relevant international conventions and protocols relating to terrorism been included as extraditable offences in the bilateral treaties to which Monaco is a party?

Since the entry into force of the first international treaties on terrorism, bilateral conventions on extradition concluded by the Principality of Monaco have

all specified objective parameters to determine the seriousness of offences of all types, rather than lists of offences as such. These conventions cover all serious offences, including all those linked to terrorism.

Subparagraph 3 (g)

The Security Council,

...

3. *Calls upon* all States to:

...

(g) *Ensure, in conformity with international law, that refugee status is not abused by the perpetrators, organizers or facilitators of terrorist acts, and that claims of political motivation are not recognized as grounds for refusing requests for the extradition of alleged terrorists;*

This subparagraph requests States to ensure "that claims of political motivation are not recognized as grounds for refusing requests for the extradition of alleged terrorists". In view of Act 1.222 of 28 December 1999 concerning extradition, please clarify how Monaco intends to meet this requirement for offences other than those set forth in the International Convention for the Suppression of Terrorist Bombings.

To supplement the information provided in the initial report, including in respect of Sovereign Ordinance No. 15,088 of 30 October 2001 concerning implementation of the International Convention for the Suppression of Terrorist Bombings, it should be pointed out that article 2 of Sovereign Ordinance No. 15,320 of 8 April 2002 concerning the suppression of the financing of terrorism contains a list of terrorist acts whose financing is prohibited. Article 11 of the Ordinance stipulates that the financing of such acts, or complicity therein, may not be recognized as a political offence.

Terrorism and its financing can thus never be regarded as political acts allowing extradition to be refused.

Provisions in the drafting stage

In the draft Sovereign Ordinance mentioned under paragraph 3 (d), in respect of offences relating to one of the international treaties provided for therein, an article envisages the broadest possible mutual legal assistance to be provided by the Principality of Monaco for any inquiry or criminal or extradition procedure.

IV. Measures implemented pursuant to paragraph 4 of Security Council resolution 1373 (2001)

The Security Council,

4. *Notes* with concern the close connection between international terrorism and transnational organized crime, illicit drugs, money-laundering, illegal arms-trafficking, and illegal movement of nuclear, chemical, biological and other potentially deadly materials, and in this regard emphasizes the need to enhance

coordination of efforts on national, subregional, regional and international levels in order to strengthen a global response to this serious challenge and threat to international security;

Has Monaco addressed any of the concerns expressed in paragraph 4 of the resolution in addition to those relating to the United Nations Convention against Transnational Organized Crime and its Protocols to which the report refers in subparagraph 3 (f)?

The Government of the Principality is well aware of the links between international terrorism and transnational organized crime. This report demonstrates that in modernizing its anti-money-laundering arsenal (originally aimed at combating the laundering of proceeds from drug trafficking and organized crime), the Government has seized the opportunity of extending the field of application of its laws to combat the financing of terrorism.

With that end also in view, on 24 June 2002, the Government signed the Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition, supplementing the United Nations Convention against Transnational Organized Crime, a key international instrument for combating terrorism and international crime. The Protocol will be ratified at the earliest opportunity. In addition, a bill enabling its incorporation into domestic law is currently being finalized.

Further, in the field of international judicial cooperation in criminal matters, the Principality unreservedly exchanges information with other countries and is known for the rapidity with which it follows up on the various requests it receives, the average period for executing commissions rogatory being three months. When the judicial authorities are called upon to investigate a person or entity implicated in a case involving transnational organized crime, drug trafficking, money-laundering, arms trafficking or illegal movement of nuclear, chemical, biological and other potentially deadly material, they successfully handle the matter within hours if urgency so requires, and usually in under a week. Moreover, foreign magistrates and foreign judicial police officers are always permitted to attend proceedings conducted by a Monegasque examining magistrate or Monegasque judicial police officers and a duly certified copy of the documents relating to the case is made immediately available to them.

Other matters

New request:

Could Monaco please provide an organizational chart of its administrative machinery, such as police, immigration control, customs, taxation and financial supervision authorities, established to give practical effect to the laws, regulations and other documents that are seen as contributing to compliance with the resolution?

Office of Home Affairs

1. *Office of the Government Adviser on Home Affairs*

A high-ranking police officer is permanently assigned to the Office of Home Affairs, responsible for ensuring the coordination and relay of information relating to public security, especially on counter-terrorism.

2. *Public Security Department*

(a) A Section of the General Information and Advisory Department is responsible for collecting all information worthy of the authorities' attention, including in the field of counter-terrorism.

(b) The Airport Controls Division has a strengthened mandate to exercise border controls under the Schengen Agreements.

(c) The Judicial Police Division is responsible for carrying out the duties assigned to it by the Monegasque judiciary. As one of the Interpol National Central Bureaux, it is responsible for relations with that body. The Judicial Police Division regularly sends representatives to attend international and regional meetings organized by Interpol and other entities coordinating counter-terrorism efforts.

(d) The Administrative Police Division, responsible for making a preliminary examination of requests for asylum in Monaco, conducts investigations to ensure that the asylum applicant has not been reported by foreign police agencies as likely to assist a terrorist activity.

- **Judicial Services Department**

The Director of Judicial Services supervises proceedings instituted by the public authorities, but is not empowered to institute or to suspend those proceedings himself. The Public Prosecutor institutes public proceedings and supervises the judicial police. He may refer the most serious cases to the examining magistrate.

Close and effective cooperation exists between the Judicial Services Department, the procurator's office and the Financial Network Information Service (SICCFIN).

- **Department of Finance and the Economy**

1. *Financial Network Information Service (SICCFIN)*

This authority is responsible for:

- Processing reports of suspicion, including those that might be linked to terrorism, terrorist acts or terrorist organizations, or to their financing,

– as well as processing requests received from foreign counterpart authorities;

To this end, SICCFIN seeks out, compiles, processes and disseminates information on financial money-laundering networks.

- The monitoring of compliance by financial institutions with the provisions of Act No. 1,162, as amended, and with the relevant implementation measures for its enforcement, including through on-site monitoring of individual transactions.

2. *Budget and Treasury Department*

This authority is responsible for:

- Collecting all necessary information from credit institutions to ensure compliance with asset-freezing requirements;
- Relations with credit-institution parent bodies (Banking Commission);
- Legal and organizational matters relating to the banking sector and financial operations;
- International cooperation on financial matters.